

17-08-2023
Court No.3
bm/mg/16.

**In The High Court At Calcutta
Jalpaiguri Circuit Bench**

C.R.R. 206 of 2023

**SAMIM USUF HAYDER @
SAMIM YUSUF HAYDER
Vs.
The State of West Bengal & Anr.**

Mr. Aditi Shankar Chakraborty
Mr. Nilay Chakraborty
...for the State

The instant application is filed under Section 482 of the Code of Criminal Procedure, 1973 for quashing of proceeding of GR case no. 136 of 2023 pending before the learned Additional Chief Judicial Magistrate, Dinhata arising out of Dinhata police station case no. 136 of 2023 dated 17.03.2023 under Section 341/323/324/354/506/34 of the Indian Penal Code and also to quash the charge sheet being charge sheet no. 220 of 2023 dated April 27, 2023 under Section 341/323/324/354/506/34 of the Indian Penal Code. The petitioner's case is that the

petitioner was on duty on 12.3.2023, the alleged date of incident and he was not present in the place of occurrence. The petitioner files a reply letter to his application under Right to Information Act. He also challenged the allegation and statement of the victim that she suffered injury. The written complaint shows that the name of the petitioner is Samim Usuf Hayder, son of Jahiruddin Ahmed. In the instant application the father's name of the petitioner is written as Sahiruddin Ahmed @ Chabiruddin Ahmed. This name could not be detected or found in the reply letter to the application under Right to Information Act. All these are, question of fact demand finding in trial. Secondly, alibye may be a defence but that cannot be a ground to quash criminal prosecution. Alibye is to be proved in trial. Therefore, that defence cannot be accepted at this stage without evidence. The pleas taken by the petitioner involves fact finding which cannot be done in exercise of jurisdiction under Section 482 of the Code of Criminal Procedure. The instant application under Section 482 is not maintainable and stands

dismissed along with other pending applications, if any.

(SUGATO MAJUMDAR, J.)